



State of Tennessee
Certification for Listing on Tennessee Directory Form
(Tenn. Code Ann. §§ 67-4-2601 *et seq.*)
Instructions and Definitions

GENERAL INFORMATION

Who is required to file a Certification of Directory? Any Tobacco Product Manufacturer that intends to begin or continue to sell cigarettes in the State of Tennessee, whether directly or through a distributor, retailer, or similar intermediary or intermediaries. (Please note the definition of "Cigarettes" includes little cigars if they meet the definition of "Cigarettes" under Tenn. Code Ann. § 47-31-102(4)) This certification form is in addition to any Certificate of Escrow Compliance that may be required pursuant to the Tennessee Tobacco Manufacturers' Escrow Fund of 1999, Tenn. Code Ann. §§ 47-31-101, *et seq.* and any rules and regulations promulgated thereunder.

Who is a Tobacco Product Manufacturer? A Tobacco Product Manufacturer is an entity that fabricates or assembles Cigarettes.

When is the Certification due? Every Tobacco Product Manufacturer currently selling in Tennessee must execute and deliver a complete Certification form and required attachments no later than the 30th day of April of each year. Any Tobacco Product Manufacturer who intends to begin selling Cigarettes in Tennessee shall file a certification and qualify for listing on the Directory prior to any sales in Tennessee.

What happens if a Tobacco Product Manufacturer fails to certify by the due date? The Tobacco Product Manufacturer will be removed from the Directory without further notice. Additionally, other legal action may be commenced against the Tobacco Product Manufacturer as permitted by state or federal law, regulation or rule.

Where must the Certification be filed? Originals must be filed with both the Tennessee Attorney General's Office (Tobacco Enforcement Division) and the Tennessee Department of Revenue at the addresses listed below.

What is the applicable law relating to this Certification? Tennessee's Tobacco Manufacturers' Escrow Fund Act of 1999, Tenn. Code Ann. §§ 47-31-101, *et seq.* and complementary legislation, Tenn. Code Ann. §§ 67-4-2601, *et seq.* and any rules and regulations promulgated thereunder.

When does a Tobacco Product Manufacturer need to file a Supplemental Certification? A Tobacco Product Manufacturer must file a Supplemental Certification no later than thirty (30) calendar days prior to any change in a Brand Family or any addition to or modification of its Brand Families. A Supplemental Certification shall also be submitted whenever information provided on the Certification becomes inaccurate, incomplete or misleading. Such Supplemental Certification must be filed within 30 days after the information becomes inaccurate, incomplete or misleading.

Please carefully review these Definitions and Instructions prior to completing the certification and compiling the necessary information.

You are required to follow the Definitions and Instructions when submitting the requested documents to this Office and the Tennessee Department of Revenue. You must use the Official State Certification for

Listing on Tennessee Directory form and Affidavit form. Failure to follow the Definitions and Instructions may result in your certification application being returned to you unprocessed or your certification being denied.

DEFINITIONS

The following definitions should be used when completing the application for certification:

1. **“Affiliate”** means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for the purposes of this definition, the term “owns”, “is owned” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more.
2. **“Applicant”, “The Company”, “Your Company”, “You” or “Company”** means the entity applying for the certification, its officers, directors, owners, employees and/or agents and includes each and every business entity which has merged into it, has comprised or comprises some part of its operations, or is closely related to it or otherwise affiliated to it during the period of its operations.
3. **“Brand Family”** means all styles of Cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to, “menthol,” “lights,” “kings,” “100s,” and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical to or similar to, or identifiable with, a previously known brand of Cigarettes.
4. **“Cigarette”** has the same meaning as in Tenn. Code Ann. § 47-31-102(4) . The term “Cigarette” includes Roll-your-own 'RYO' tobacco (0.09 ounces of which constitutes one individual “Cigarette”) and those Cigarettes that, despite being sold as “little cigars”, meet the definition of “Cigarette” in Tenn. Code Ann. § 47-31-102(4).
5. **“Directory”** means the listing of Tobacco Product Manufacturers and Brand Families created and maintained pursuant to Tenn. Code Ann. § 67-4-2602(b).
6. **“Document(s)”** means all writings or any other record of any kind, including originals and each and every non-identical copy (if different from the original for any reason). The term “document(s)” includes, but is not limited to:
 - (a) correspondence, memoranda, notes, diaries, calendars, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, and interoffice and intraoffice communications;
 - (b) notations (of any sort) of conversations, telephone calls, meetings, and other communications;
 - (c) bulletins, printed matter, computer printouts, computer generated output, teletypes, telefax, electronic mail, invoices, worksheets, drafts, alterations, modifications, changes, and amendments of any kind;
 - (d) photographs, charts, graphs, sketches, microfiche, microfilm, videotapes, video recordings, and motion pictures; and
 - (e) any electronic or mechanical, records or representations of any kind (including, but not limited to: tapes, cassettes, diskettes, audio recordings, and computer hard drives and other storage).
7. **“Master Settlement Agreement”** has the same meaning as set forth in Tenn. Code Ann. § 47-31-

- 102(5).
8. **“Non-Participating Manufacturer”** means any Tobacco Product Manufacturer that is not a Participating Manufacturer.
 9. **“Participating Manufacturer”** has the same meaning given that term in Section II(j) of the Master Settlement Agreement and amendments thereto.
 10. **“Person”** means any natural person, public or private corporation (whether or not organized for profit), governmental entity, partnership, committee, individual, group of persons, association, cooperative, joint venture, sole proprietorship, or other legal entity wherever located. In the case of a business or legal entity, “person” includes each of its parents and each subsidiary, division, and affiliate of it or any of its parents; each predecessor or successor of any of them; each present or former officer, director, manager, employee, or agent of any of them; and each person who is acting or purports to act on behalf of any of them. In the case of a natural person, “person” includes each present or former employee, or agent of person.
 11. **“Qualified Escrow Fund”** has the same meaning as the term defined at Tenn. Code Ann. § 47-31-102(6).
 12. **“Stamping Agent”** means a person that is authorized to affix tax stamps to packages or containers of Cigarettes under Tenn. Code Ann. § 67-4-1006 or any person that is required to pay the tobacco tax imposed pursuant to Tenn. Code Ann. § 67-4-1002.
 13. **“Tobacco Product Manufacturer”** has the same meaning as set forth in Tenn. Code Ann. § 47-31-102(9). Tennessee law provides that the “Tobacco Product Manufacturer” is the entity that fabricates or assembles the cigarettes.
 14. **“Units Sold”** has the same meaning as term defined in Tenn. Code Ann. § 47-31-102(10).

INSTRUCTIONS

- A. **Complete all forms by printing legibly in blue permanent ink or by typing your responses.** You may fill the forms in on-line. However, any signatures must be executed in blue permanent ink.
- B. **You must use the official State forms.** You are required to use the official State forms to submit your Certification of Directory, Model Escrow Agreement and the required Affidavits. You may not create your own forms.
- C. **Re-certification applications.** If you are re-certifying, you are required to complete the entire current certification form and affidavits.
- D. **Number of copies.** You are required to provide 2 signed originals of your Certification, attachments, and responses for your Certification to be considered complete. One original should be provided to the Tobacco Enforcement Division of the Tennessee Attorney General and the other original to the Tennessee Department of Revenue at the addresses listed below.

E. **Addresses.** You should send your completed responses to the appropriate addresses for the Tennessee Attorney General and the Tennessee Department of Revenue:

For postal service delivery:

Tennessee Attorney General's Office
Tobacco Enforcement Division
Attn: Certification Application
Post Office Box 20207
Nashville, TN 37202-0207

For overnight courier delivery:

Tennessee Attorney General's Office
Tobacco Enforcement Division
Attn: Certification Application
425 Fifth Avenue North, Cordell Hull Building
2nd Floor
Nashville, TN 37243

For postal service delivery:

Tennessee Department of Revenue
Attn: Certification Application
Andrew Jackson State Office Building
Post Office Box 190590
Nashville, TN 37219

For overnight courier delivery:

Tennessee Department of Revenue
Attn: Certification Application
Andrew Jackson State Office Building
500 Deaderick Street
Nashville, TN 37242

F. **Time frame for production.** Unless otherwise indicated, Documents required to be produced with the Certification include each and every document prepared, sent, dated, received, in effect, or which otherwise came into existence during the period from May 26, 1999 to the date of submission of the Certification by the Applicant.

G. **All documents regardless of location.** To be a complete Certification, the Applicant must produce all Documents responsive in the Applicant's possession, custody or control without regard to the physical location of the Documents.

H. **Originals.** Documents to be produced shall be originals unless otherwise indicated. If the Applicant's "original" is a copy, that copy should be produced as the original.

I. **No responsive Documents.** If the Applicant possesses no Documents responsive to a requirement on the Certification form, the Applicant must state this fact, specifying the paragraph(s) or subparagraph(s) concerned in the response.

J. **Assertion of Privilege.** If the Applicant asserts a privilege in response to the requirement to produce a Document on the Certification form, the Applicant must state the privilege, basis for the privilege, and identify the Documents to which the privilege attaches.

K. **Numbering of documents.** The Applicant should identify each and every Document produced in response to the Certification with the initials of the Applicant. Each and every Document should be numbered consecutively, commencing with number one (1). (Note: These initials and numbers should appear in the lower right-hand corner of each Document.) Required Documents should be placed in a separate enclosure (*e.g.*, folder or file) and the enclosure should be labeled with the Applicant's name, date and year of the certification response, and indication as to which paragraph or subparagraph of Certification form to which the enclosed Documents are responsive. If a Document is responsive to more than one Certification form request, then the Applicant should indicate each and every Document request to which the document is responsive.

L. **English Translation Required.** The Certification form, all required attachments, requested and required Documents must be completely TRANSLATED in English. If any Document(s) to be provided contain words, information or other written communication which are not in English, you must provide a

translation of the Document along with the original untranslated document. In addition, you need to provide an affidavit executed before a notary from the translator certifying the translation of the document is a true and correct translation of the original untranslated Document.

M. **Not applicable.** If any section of the Certification form is not applicable to your company, please clearly state “not applicable” where relevant. You should include an explanation of why the particular section does not apply to your company.

Part 2: SPECIFIC INSTRUCTIONS

Brand Family Identification. You must identify by Brand Family and brand name all of the Cigarettes (including little cigars if they meet the definition of cigarettes under Tenn. Code Ann. § 47-31-102(4) that the Tobacco Product Manufacturer intends to begin or continue selling in Tennessee whether directly or through any distributor, retailer, or similar intermediary or intermediaries, and seeks to have included on the Directory. Only the brand families identified may be included in the Directory.

Any person who makes a false statement in the Certification or its attachments that he or she knows is false may be guilty of perjury set forth at Tenn. Code Ann. § 39-16-702 and possibly other criminal statutes.